

Consultation Paper on the Proposed Implementation of a Five-Day Week for the Judiciary

PURPOSE

The purpose of this paper is to invite comments from all concerned, in particular Judges and Judicial Officers, staff in the Judiciary Administration, the legal profession and other court users, on the proposed implementation of a five-day week in the Judiciary.

BACKGROUND

The Administration's Policy Initiative

2. In January 2006, the Chief Executive announced the setting up of a working group to examine the proposal and implementation details of introducing a five-day week in the Government with effect from 1 July 2006. To ensure that quality services will continue to be delivered to the community, this policy initiative is governed by four basic principles:

- (a) No additional staffing resources;
- (b) No reduction in the conditioned hours of service of individual staff;
- (c) No reduction in emergency services; and
- (d) While in general all offices will cease operation on Saturday, a limited number of essential counter services may continue to be provided on Saturday.

3. The Judiciary understands that under the above policy initiative, all services provided by the Administration should generally operate on a five-day pattern, i.e. Monday to Friday, with the exception of essential services that must be provided on Saturday; and emergency services which must operate round-the-clock. The Judiciary also

understands that with the implementation of a five-day week, the Administration will take suitable measures to minimise the impact on the public, including extension of service hours on weekdays, facilitation for greater use of electronic service, provision of drop-in boxes, etc.

4. More recently, the Judiciary notes that the Administration intends to adopt a phased approach in implementing the policy initiative:

- (a) Phase I (which will take effect on 1 July 2006) – the five-day week is expected to apply to back offices and areas where the discontinuation of the service concerned on Saturday mornings would have insignificant impact on the general public; and
- (b) Subsequent phases (which are expected to take effect not later than 1 July 2007) – the five-day week may extend to other public services, subject to further examination and consultation with staff and relevant stakeholders, as appropriate.

The delivery pattern of services that have to remain available on Saturday will remain basically unchanged. Emergency services, most notably those involving the maintenance of law and order, administration of penal institutions, provision of rescue services, etc. will continue to be provided round-the-clock.

The Judiciary's Response to the Administration's Initiative

5. The Judiciary is of course independent of the Administration and Judges and Judicial Officers (“Judges”) are of course not civil servants. Under section 6(2) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484, the Chief Justice is the head of the Judiciary, and is charged with the administration of the Judiciary.

6. The Judiciary Administration staff (“JA staff”) are essentially civil servants. The staff establishment is 1,408. All civil service regulations and practices are applicable to these staff working in the Judiciary Administration.

7. Having regard to the policy initiative proposed by the Administration at paragraphs 2 to 4 above and that JA staff are essentially civil servants, **the Chief Justice intends to adopt in principle a five-day week for the Judiciary.** The Chief Justice has asked the Judiciary Administration to develop proposals on implementation details in consultation with the Court Leaders, and proceed to consult all parties concerned with a view to finalizing the plan for implementation.

THE PRESENT POSITION: FIVE-AND-A-HALF-DAY WEEK IN THE JUDICIARY

8. At present, all court and support services in the Judiciary are provided on a five-and-a-half-day week basis. This includes Saturday morning. In addition, Saturday mornings are regularly used for the organization of training and development programmes for both judges and JA staff, and for committee meetings for both internal committees and those involving members outside the Judiciary.

9. As far as services which have an interface with court users and the public are concerned, the following are now provided on a five-and-a-half-day basis; including Saturday morning when they are provided from 9:00am to 12:00 noon¹ :

- (a) Hearings and sittings at various levels of court which deal with listed and/or part-heard cases, including the admission of barristers and solicitors (which is usually scheduled to take place on a Saturday);
- (b) Court registries at various levels of court which deal with filing of documents, fixing of hearing dates and other court procedural matters;
- (c) Accounts offices at various levels of court which deal with collection of fines and bail money, payment into court,

1 : JA Staff are now required to work on alternate Saturdays. Generally speaking, they work either (i) from 9:00 a.m. to 1:00 p.m. (if their working hours on Fridays are from 9:00 a.m. to 5:00 p.m.); or (ii) from 9:00 a.m. to 12:00 noon (if their working hours on Fridays are from 9:00 a.m. to 5:30 p.m.).

payment out of witness expenses and refund of bail money, etc;

- (d) Offices of the Court Order Section (Bailiff Offices) which deal with enforcement of judgment and services of documents;
- (e) Office of the Court Language Section which deals with applications for certification services for documents to be used in court proceedings;
- (f) Libraries which provide legal reference services to both internal and external users of the Judiciary;
- (g) General enquiries and information services which include the Press and Public Relations Office, the Resource Centre for Unrepresented Litigants, the various information and enquiries counters and telephone enquiries and hotline services.

10. There are many JA staff who work in the back office and are not involved in the direct delivery of service to court users and the public. These staff now also work on a five-and-a-half-day week pattern.

PROPOSED CHANGE TO A FIVE-DAY WEEK

11. In considering the proposed change from a five-and-a-half-day week to a five-day week, the Judiciary has adopted similar principles as set out by the Administration (see paragraph 2). Further, the Judiciary has assessed the possible implications of the proposed change for court users and has considered the adoption of complementary measures upon the implementation of a five-day week. The key considerations are set out in paragraphs 12 to 21 below.

Necessary Services

12. Having regard to their nature, it is considered necessary to provide the services set out in paragraph 13 below on Saturday morning. Apart from such services, the other court and support services set out in

paragraph 9 need not be provided on Saturday morning and the proposed change to a five-day week should not create any problems.

13. It should be noted that fresh remand cases at Magistrates' Courts have to be brought before the court in order to satisfy the 48-hour requirement under section 52(1) of the Police Force Ordinance ("PFO"), Cap. 232². Hence, if no Magistrates' Courts are open on Saturdays and Sundays, the Police will have to discharge the person arrested. This is unacceptable. At present, if Magistrates' Courts are closed for more than two consecutive public holidays, these cases are dealt with by the holiday sittings arrangement whereby some but not all Magistrates' Courts would be open on these holidays to deal with fresh remand cases. **It is proposed that if a five-day week is implemented in the Judiciary, a new Saturday sitting roster arrangement would be introduced in addition to the existing holiday sitting arrangement. Under this arrangement, on any Saturday morning (which is not a public holiday), four Magistrates' Courts will be open to deal with fresh remand cases from the Hong Kong Island, Kowloon, New Territories East and New Territories West Regions respectively.**

14. At present, the Judiciary designates duty judges at various level of court to deal with urgent applications under various ordinances outside office hours. The obvious examples are urgent injunction applications which are dealt with by duty Court of First Instance Judges and urgent applications under the Mental Health Ordinance which are dealt with by duty District Judges and Magistrates. **Upon the implementation of a five-day week in the Judiciary, the duty judges at various levels of court would be on duty for the whole day of Saturday in the same way as they are on duty on Sundays and public holidays.**

15. As regards urgent applications to court offices other than judges, the only area is urgent applications for enforcement of judgment, for example, in executing warrants of arrest against vessels in admiralty cases. At present, the Bailiff Office designates duty officers to deal with these urgent applications outside office hours. **Upon the**

2 : Section 52(1) of the PFO provides that a persons arrested by the Police shall be discharged on recognizance; but where such person is detained in custody, he shall be brought before a Magistrate as soon as practicable, unless within 48 hours a warrant for his arrest and detention under any law relating to deportation is applied for.

implementation of the five-day week, the duty Bailiffs would be on duty for the whole day of Saturday in the same way as they are on duty on Sundays and public holidays.

Court Sittings

16. The five-day week arrangement will apply to court sittings. Court sittings will be fixed on weekdays and the sitting hours will remain unchanged. Sittings will not be fixed for Saturdays. However, sitting times continue to be subject to the judges' discretion. In the exercise of such discretion, a judge may in exceptional circumstances decide to sit on a Saturday morning; for example, where the case has to be concluded and judgment given as a matter of urgency. Apart from court sittings, judges of course spend a very considerable amount of time outside court reading papers in preparation for hearings and writing judgments.

Registries/Offices Hours

17. The Judiciary estimates that on a Saturday morning, the number of court users served in registries/offices is about 1,500, roughly 30% of the average number of court users served on a weekday. The Judiciary takes the view that changing to a five-day week will not create undue inconvenience.

18. With the implementation of a five-day week, the Judiciary has reviewed the opening hours of registries/offices with a view to maintaining the existing level of services to court users. This will also ensure that performance targets of the various services would be maintained upon implementation of the five-day week. It is intended that the commencement of business of all registries/offices will remain unchanged at 9:00 am from Mondays to Fridays. **But the closing time of all court registries/offices will be extended from 5:00 pm to 5:45 pm from Mondays to Thursdays; and will remain unchanged at 5:00 pm on Fridays.**

Working Hours of JA Staff

19. Having regard to the principle of no reduction in the conditioned hours of service of individual JA staff, upon the implementation of a five-day week, **it is proposed that:**

- (a) **The working hours for most JA staff who are conditioned to work 44 hours gross per week would be from 9:00 am to 6:00 pm from Mondays to Thursdays and from 9:00 am to 5:00 pm on Fridays.**
- (b) **For those JA staff who are conditioned to work 45 hours net per week or those who are required to work on a shift pattern, the revised working hours will be worked out by making reference to any guidelines to be promulgated by the Civil Service Bureau in the Administration and the operational needs of the various offices.**

Judicial Studies Board Activities

20. Upon the implementation of the five-day week, while training and development activities conducted by the Judicial Studies Board for judges should usually take place on weekdays, it is noted that certain exceptions may need to be made.

21. At present, there are a number of Judicial Studies Board events held in the year which involve the participation of a large number of Judges, e.g. sentencing conferences which involve the entire magisterial bench. In order to mitigate the impact of the holding of these large-scale events on court diaries, **it is proposed that consideration should be given to holding these large scale training events on a Saturday, but such occasions should be limited to not more than a few per year.**

IMPLEMENTATION

Requirements for Legislative Amendments

22. At present, those statutory provisions and/or Practice Directions issued by the Chief Justice relating to court sitting hours do not touch specifically on sittings on Saturdays. Hence, no legislative amendments are required to enable the implementation of a five-day week.

23. However, the hours of operation of many registries, accounts offices and offices of the Judiciary are currently governed by either (i) Rules of Court; and/or (ii) directions by the Chief Justice in gazette notice GN 5092 of 2002, which include opening on Saturdays.

24. To enable the implementation of the five-day week, **it is proposed that:**

- (a) **All relevant Rules of Court would need to be amended by the respective Rules Committees, subject to negative vetting by the Legislative Council; and/or**
- (b) **New Directions on opening hours of registries, etc. would need to be issued by the Chief Justice.**

25. Time limits are specified in legislation, Practice Directions or court orders. The present position is as follows: -

- (a) Where the period in question is a period of seven days or less, Sundays and public holidays³ are excluded in the calculation of the time limits;
- (b) Where the period in question is a period of more than seven days, Sundays and public holidays are included in the calculation of the time limits; and
- (c) Where the time prescribed for doing any act at a court office expires on a Sunday or other day on which the court office is closed, by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

26. **Upon the implementation of the five-day week, it is proposed that consideration should be given to amending the relevant Rules of Court to provide that:**

3 : "Public holiday" in section 71 includes a Sunday. See its definition in Cap 1 and the General Holidays Ordinance, Cap. 149.

- (a) **Where the period in question is a period of seven days or less, Saturdays (in addition to Sundays and public holidays) would be excluded in the calculation of time limits;**
- (b) **Where the period in question is a period of more than seven days, Saturdays (in addition to Sundays and public holidays) would be included in the calculation of the time limits; and**
- (c) **In relation to para 25(c), although Saturday would be a day on which the court office would be closed, for the sake of clarity, Saturday would be specified in addition to and treated in the same way as Sunday or other day on which the court office is closed.**

27. The Judiciary will prepare the necessary amendments to rules of court in due course and will consult all relevant parties on the draft rules in the normal way.

28. However, the above-mentioned proposed amendments to court rules only relate to time periods provided for under court rules or court orders. It should be noted that section 71⁴ of the Interpretation and General Clauses Ordinance, Cap 1 deals with the computation of time for the purposes of any Ordinance, subject to any contrary intention. It

4 : Section 71 – Computation of Time

- “(1) In computing time for the purposes of any Ordinance-
- (a) a period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
 - (b) if the last day of the period is a public holiday or a gale warning day or black rainstorm warning day the period shall include the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;
 - (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is a public holiday or a gale warning day or black rainstorm warning day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;
 - (d) where an act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, no public holiday or a gale warning day or black rainstorm warning day shall be reckoned in the computation of that time. (Amended 43 of 1983 s. 2; 68 of 1995 s. 16).”

includes provisions concerning a period expiring on a public holiday which is defined to include a Sunday when the period is deemed to extend to the following working day. Section 71(1)(b). A period expiring on a Saturday is not dealt with. It is understood that the Administration does not intend to amend section 71 of Cap 1 in connection with the implementation of the five-day week as any amendment may have widespread repercussions. That being so, it must be pointed out that with registries/offices in the Judiciary closed on Saturday, where a time period prescribed by Ordinance, such as a limitation period, expires on a Saturday, no statutory provision will exist to extend time as in the case of a public holiday under section 71(1).

Phased Implementation

29. **It is proposed that the five-day week will be implemented in the Judiciary in two phases.**

Phase I

30. **It is proposed that phase I will take place either on 1 July 2006 or the earliest practicable date thereafter.** This will apply to the following:

- (a) **Court sittings⁵.** At the same time, a new Saturday sitting roster arrangement will be introduced to deal with fresh remand cases in the Magistrates' Courts. (See paragraph 13). ;
- (b) **All support staff who are not involved in the direct delivery of services to court users and the public;** and
- (c) **As regards services which have an interface with the public, those services which require no legislative amendments in relation to the implementation of the five-day week.** These include:

5 : That means that Saturday Sittings will cease at various levels of court upon the implementation of the five-day week. Admission of barristers and solicitors will also take place at a convenient time on a week day, and consideration will be given to facilitating photograph taking at the ground floor lobby of the High Court after the admission sittings.

- (i) **Office of the Court Language section** which deals with the applications for certification of documents to be used in the court proceedings:
- (ii) **Libraries** which provide legal reference services to both internal and external users of the Judiciary; and
- (iii) **General enquiries and information services** which include the Press and Public Relations Office, the Resource Centre for Unrepresented Litigants, various information counters, and telephone enquiries and hotline services.

31. The opening hours of offices affected in Phase I will be revised as set out in paragraph 18 above upon the implementation of the five-day week on 1 July 2006 or the earliest practicable date thereafter. Revised working hours for JA staff affected will also be implemented on the same date.

32. It is estimated that about 1,000 JA staff will be covered in Phase I.

Phase II

33. **It is proposed that Phase II will essentially cover those services/offices which require amendments to legislation in relation to the implementation of the five-day week.** This can only take place after the necessary legislative amendments have been enacted. For planning purpose, it is intended that Phase II will take effect on 1 July 2007 or the earliest practicable date thereafter.

34. **Phase II** will cover the following offices:

- (a) **Court registries** which deal with filing of documents, fixing of hearing dates and court procedural matters;
- (b) **Accounts offices** which deal with collection of fines, bail money, payment into court, payment out of witness expenses and refund of bail money; and

- (c) **Bailiff offices** which deal with the applications for execution of judgment and service of documents.

35. **It is proposed that before the implementation of Phase II, the opening hours of offices at paragraph 34 above and the working hours of affected JA staff will remain unchanged in the interim.**

36. It is estimated that about 400 JA staff in the Judiciary Administration will be covered in Phase II.

VIEWS SOUGHT

37. All concerned are welcome to send their views and comments on the above proposals as set out in paragraphs 13,14, 15, 18, 19, 21, 24, 26, 29, 30, 33, 34 and 35.

38. Comments should be sent to the following officer in the Judiciary Administration:

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39. It would be appreciated if comments could be received by 10 May 2006.

Judiciary Administration
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